

S.B. CIVIL WRIT PETITION NO.3034/2007
Smt. Ghisi Bai & Ors.
Vs.
Ramjilal & Ors.

DATE OF ORDER : 21.5.2007

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ
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Shri A.K. Bhandari Sr.Advocate with
Shri Rizwan Ahmed for the petitioners.

Heard learned counsel for the
petitioners.

In this writ petition, the
petitioner has challenged the order
dated 27.11.2006 whereby the review
application filed by the petitioner as

to the execution of decree dated 30.3.1981 was rejected.

Learned counsel for the petitioner argued that the decree-holder did not deposit the complete amount of sale consideration in terms of the decree but the learned court on consideration of this objection, noted that the amount of Rs.1800/- was paid by the decree-holder on 4.3.1977 and the remaining amount of Rs.200/- was agreed to be paid at the time of execution of the sale deed. When the first Execution Petition no.20/1981 was filed, it was stated by the

decree-holder that the said amount of Rs.200/- was sent to the judgment-debtor by money order which he declined to accept. The decree-holder on 30.3.1981 submitted an application under Section 151 CPC offering to deposit sum of Rs.200/- in the court. Learned counsel for the petitioner further argued that when the complete amount of sale consideration has not been paid in terms of the decree, the decree becomes in-executable inasmuch as, if at all it is accepted that the judgment-debtor declined to accept, then the amount should have been

deposited in the court and mere filing of application offering to deposit the amount would not discharge the burden of the decree-holder.

Having heard learned counsel for the petitioner and perused the material on record, I find that the executing court considered not only the assertion made by the decree-holder but also the fact that the postal receipt on which the refusal was recorded and also the fact that the decree-holder immediately offered to deposit the remaining amount. The executing court, therefore, held that

due to bona fide and technical mistake like the present one, the decree passed way back on 30.3.1981 should not be allowed to be frustrated. I do not find that the learned court has taken any wrong approach in the manner. In fact, the aforesaid bona fide or technical mistake, was attributable to the judgment-debtor who avoided to accept the sale consideration and now when the court directed that amount of Rs.200/- be paid to him with interest no exception can be taken.

Learned counsel further argued that the land has been acquired and vest in the State Government. If that be so, it is always open to the UIT, Ajmer to take its remedy in accordance with law.

I, therefore, do not find any merit in this petition, which is accordingly dismissed.

(MOHAMMAD RAFIQ), J.

Skant/-